

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Date of Decision : 25.01.2018

1.

RSA No.3524 of 2009 (O&M)

Ajit Singh and another

..... Appellants

Versus

Usha Tah and others

..... Respondents

2.

RSA No.2950 of 2014 (O&M)

Kulbir Singh and another

..... Appellants

Versus

Savita Tah

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Vikas Bahl, Senior Advocate with
Ms. Japneet Kaur , Advocate
for the appellants.

Mr. Jagatpal Singh Banwait, Advocate for
Mr. Sarju Puri, Advocate
for the respondents.

AJAY TEWARI, J. (Oral)

CM No.7015-C of 2014 in RSA No.2950 of 2014

This is an application for bringing on record the legal heirs of
the deceased Harbhajan Kaur (defendant No.1).

For the reasons recorded, the application is allowed subject to
all just exceptions. Persons mentioned in para No.2 of the application are

impleaded as LRs of the deceased Harbhajan Kaur (defendant No.1).

Registry is directed to make necessary corrections in the Memo of Parties.

Amended memo of parties is taken on record.

RSA No.3524 of 2009 and RSA No.2950 of 2014

These two appeals have been filed against the concurrent judgments of the Courts below decreeing two suits filed by the respondents (who are closely related).

The case of the respondents in their two suits was that they were the owners of the property in dispute and that the appellants who were their neighbour had encroached thereon.

It had been mentioned that when the respondents had discovered the encroachment they had remonstrated with the appellants and compromise (Annexure PW 4/A) had been arrived at whereby the appellants had agreed to remove their illegal encroachment but not having done so the instant suit was filed.

The case of the appellants on the other hand was that the property claimed by the respondents was purchased by them. The respondents had no right, title or interest in the property and no compromise had ever been effected between the parties. However, when the appellant No.2 appeared as witness DW-3 she had to admit the signatures of her husband and her two sons on the compromise. It was this fact which primarily persuaded the Courts below to hold the claim of the respondents to be valid and consequently the Courts below decreed the suit.

Learned counsel for the appellants has argued that there is a discrepancy between description of the property in the compromise and the

materially affect the merits. It must not be lost sight of that originally the appellants had denied any compromise; if later on during cross examination she had to admit the compromise then the onus shifted upon her to prove which property it related to, because otherwise it is not disputed that the parties are neighbours. Learned counsel has argued that it was the duty of the respondents to have proved the identity of the property and merely by the acceptance of the compromise the case of the respondents could not be proved. This argument may have been accepted, if this was the only factor which influenced the Courts below in coming to the decision they did. However, in this case there was other evidence too apart from this which established the case set up by the respondents, that in fact they were owners of the land in dispute and the appellants had encroached thereon.

No fault can be found with the judgments of the Courts below.

Appeal is dismissed.

Since the main case have been decided, the pending civil miscellaneous applications, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

25.01.2018
pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No